

Department of Commerce and Insurance

April 2005

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STATE OF TENNESSEE
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John G. Morgan
Comptroller

April 6, 2005

The Honorable Phil Bredesen, Governor
and

Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

and

The Honorable Paula Flowers, Commissioner
Department of Commerce and Insurance
Fifth Floor, Davy Crockett Tower
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the financial and compliance audit of the Department of Commerce and Insurance for the period July 1, 2001, through June 30, 2004.

The review of internal control and compliance with laws and regulations resulted in certain findings which are detailed in the Objectives, Methodologies, and Conclusions section of this report.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/eb
04/082



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF STATE AUDIT**

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July 2, 2004

The Honorable John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, Tennessee 37243

Dear Mr. Morgan:

We have conducted a financial and compliance audit of selected programs and activities of the Department of Commerce and Insurance for the period July 1, 2001, through June 30, 2004.

We conducted our audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. These standards require that we obtain an understanding of internal control significant to the audit objectives and that we design the audit to provide reasonable assurance of the Department of Commerce and Insurance's compliance with laws, regulations, and provisions of contracts or grant agreements significant to the audit objectives. Management of the Department of Commerce and Insurance is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

Our audit disclosed certain findings which are detailed in the Objectives, Methodologies, and Conclusions section of this report. The department's administration has responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

We have reported other less significant matters involving the department's internal control and/or instances of noncompliance to the Department of Commerce and Insurance's management in a separate letter.

Sincerely,

Arthur A. Hayes, Jr., CPA,
Director

AAH/eb

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Financial and Compliance Audit
Department of Commerce and Insurance
April 2005

AUDIT SCOPE

We have audited the Department of Commerce and Insurance for the period July 1, 2001, through June 30, 2004. Our audit scope included a review of internal control and compliance with laws and regulations in the areas of Modular Housing, Manufactured Housing, Arson, Consumer Affairs, Securities, Insurance, TennCare Oversight, Regulatory Board Administration, Emergency Communications Board, Motor Vehicle Commission, Contractors/Home Improvement Board, Boxing and Racing Board, Alarm System Contractors Board, Geology Registration Board, Employee Leasing Board, Contracts, Conflicts of Interest, and compliance with the Financial Integrity Act. The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

AUDIT FINDINGS

Codes Enforcement Is Not in Compliance With Modular Housing Policies and Procedures

The Codes Enforcement section has not complied with its policies and procedures concerning license renewal of construction inspection agencies, license renewal of modular building manufacturers, and obtaining monthly production reports from the modular building manufacturers (page 5).

Manufactured Housing Inspections May Not Be Performed*

The Codes Enforcement section of the Division of Fire Prevention is not enforcing federal and

state policies and procedures for documentation of manufactured housing inspections (page 8).

The Division of Consumer Affairs Is Still Failing to Take Timely Action on Complaints, Has Failed to List Companies on Its Buyer Beware List, and Has Significant Database Problems*

The division is not sending letters to respondents within the time frame specified in its policies and procedures for following up consumer complaints. The division has not updated the "Buyer Beware List" since July 2003 and the division has serious database problems (page 12).

The Regulatory Board Division's Policies and Procedures for Preparation of the Annual Report Are Inadequate

The Division of Regulatory Boards does not have adequate written documentation of the procedures employed to produce the annual report of each board's fees collected, expenditures, and reserve balances (page 17).

The Employee Leasing Board Is Not Enforcing the Requirements for Timely Certification of Payroll Tax Payments or Documentation of Workers' Compensation Insurance Coverage by Licensees

The Employee Leasing Regulatory Board is not ensuring that a certification from an independent CPA is received within 90 days

of the end of each quarter or that proof of workers' compensation insurance is received from the licensee (page 24).

Conflict-of-Interest Disclosure Not Required for Board Members

The Department of Commerce and Insurance does not require board members to provide a conflict-of-interest disclosure form. Although the department has developed policies and procedures for disclosing potential employee conflicts of interest, the policies and procedures do not encompass potential board member conflicts of interest (page 27).

*This finding is repeated from prior audits.

Financial and Compliance Audit

Department of Commerce and Insurance

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Financial and Compliance Audit

Department of Commerce and Insurance

INTRODUCTION

POST-AUDIT AUTHORITY

This is the report on the financial and compliance audit of the Department of Commerce and Insurance. The audit was conducted pursuant to Section 4-3-304, *Tennessee Code Annotated*, which requires the Department of Audit to “perform currently a post-audit of all accounts and other financial records of the state government, and of any department, institution, office, or agency thereof in accordance with generally accepted auditing standards and in accordance with such procedures as may be established by the comptroller.”

Section 8-4-109, *Tennessee Code Annotated*, authorizes the Comptroller of the Treasury to audit any books and records of any governmental entity that handles public funds when the Comptroller considers an audit to be necessary or appropriate.

BACKGROUND

The Department of Commerce and Insurance was established to protect the public health and safety of Tennessee’s citizens. The mission of the department is to provide the leadership and support necessary to protect the public health and safety by

- maintaining public confidence in the integrity of the consumer and financial service industries and professions;
- safeguarding consumers from deceptive business practices;
- ensuring a fair and competitive marketplace in which businesses have the flexibility to operate in order to promote economic and community development within the state;
- requiring adherence to certain recognized and established standards of conduct in consumer and financial service industries and professions; and
- protecting life and property through fire prevention, education, investigation and enforcement, and access to enhanced emergency communications.

All programs support the central mission of the department and have a direct impact on the physical and financial health, education, and public safety of Tennessee's citizens. The following are the department's seven major programs:

Consumer Affairs – Protects consumers from deceptive business practices by enforcement of the Tennessee Consumer Protection Act and mediates or otherwise resolves more than 6,000 consumer complaints per year.

Fire Prevention – Protects life and property through the state's building and safety codes enforcement operations, arson and explosives investigations, and training for volunteer and career firefighters and codes officials through the state's Fire Service and Codes Enforcement Academy.

Insurance – Protects the public through oversight and administration of insurance statutes to ensure the financial integrity of companies operating in the state and ensure that companies and agents are acting in compliance with the state law.

Securities – Protects investors by enforcing the Tennessee Securities Act of 1980 and by maintaining the integrity of the securities market.

TennCare Oversight – Protects the public health and integrity of the TennCare Program by overseeing, examining, and monitoring the practices of the health maintenance organizations (HMOs) and behavioral health organizations (BHOs) that contract to provide services to 1.4 million TennCare enrollees.

Emergency Communications Board – Protects the public through implementation of statewide enhanced 911 service for land and wireless lines.

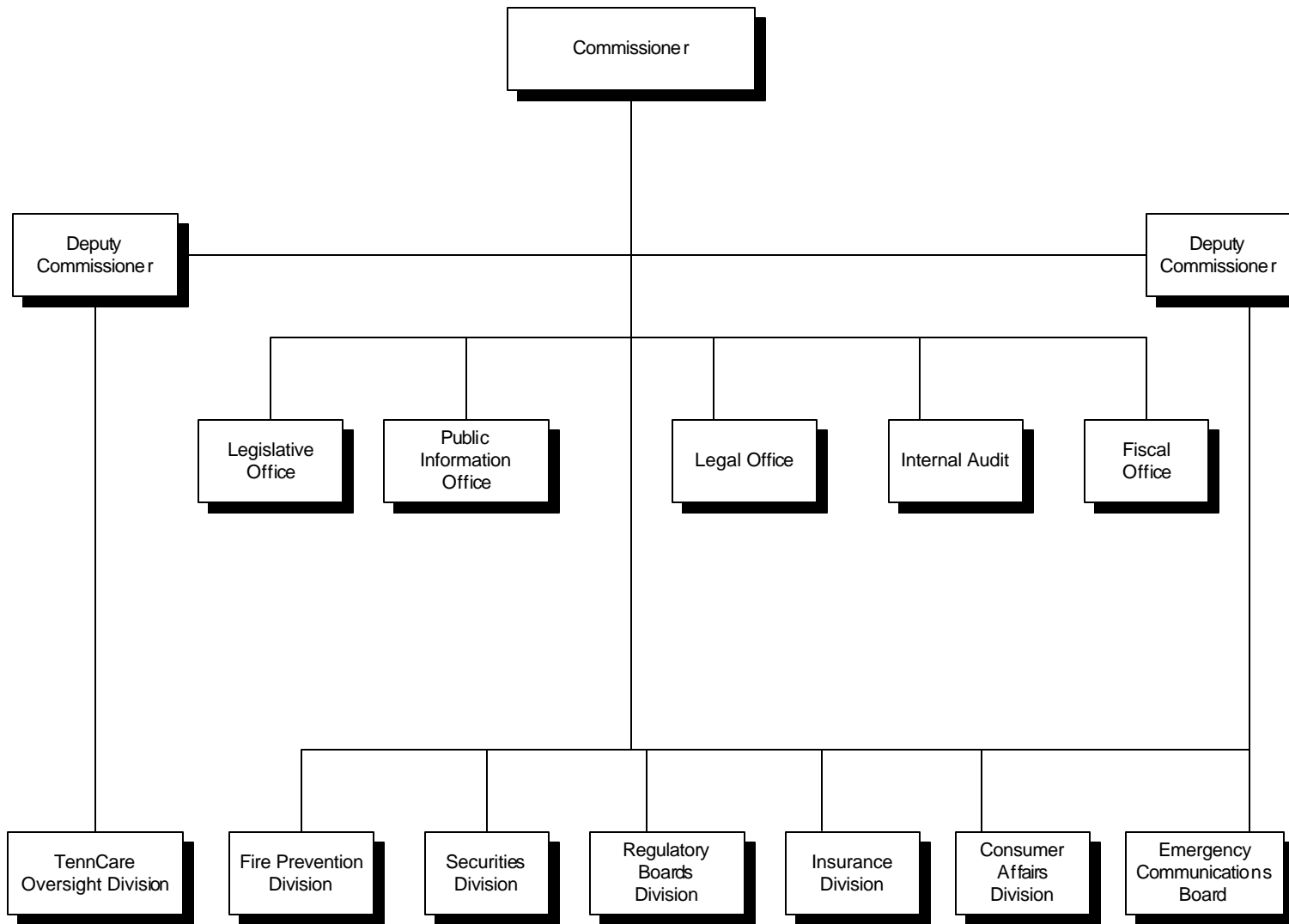
Regulatory Boards – Protects the health and safety of citizens through boards and commissions, by ensuring that persons meet minimum professional standards, by responsively and timely handling complaints, and by providing consumer education on regulated professions and industries.

An organization chart of the department is on the following page.

AUDIT SCOPE

We have audited the Department of Commerce and Insurance for the period July 1, 2001, through June 30, 2004. Our audit scope included a review of internal control and compliance with laws and regulations in the areas of Modular Housing, Manufactured Housing, Arson, Consumer Affairs, Securities, Insurance, TennCare Oversight, Regulatory Board Administration, the Emergency Communications Board, the Motor Vehicle Commission, the Contractors/Home

Department of Commerce and Insurance Organization Chart



Improvement Board, the Boxing and Racing Board, the Alarm System Contractors Board, the Geology Registration Board, the Employee Leasing Board, Contracts, Conflicts of Interest, and the Financial Integrity Act. The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

PRIOR AUDIT FINDINGS

Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The Department of Commerce and Insurance filed its report with the Department of Audit on March 31, 2003. A follow-up of all prior audit findings was conducted as part of the current audit.

REPEATED AUDIT FINDINGS

The prior audit report also contained findings concerning inadequate documentation of manufactured housing inspections and failure to comply with procedures for follow-up with consumer complaints. These findings have not been resolved and are repeated in the applicable sections of this report.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

MODULAR HOUSING

The Codes Enforcement Section of the Division of Fire Prevention by statute has the responsibility of enforcing fire and building codes for the purpose of protecting the citizens of Tennessee from injury or death. One responsibility of the section is to monitor the construction and installation of modular buildings used for educational, business, residential, storage, and other occupancy purposes. This is accomplished by licensing a third-party Construction Inspection Agency to conduct inspections of the modular housing manufacturer.

The objectives of our review of modular housing were to determine

- whether the section's policies and procedures were adequate to carry out its function,
- whether the section follows its policies and procedures,
- if inspection reports by the third-party inspection agency are maintained,

- if section approval of the third-party inspection agency is obtained,
- if evidence of the manufacturer's license is available, and
- if monthly reports from the manufacturer are on file.

We interviewed key personnel to gain an understanding of the section's modular housing policies and procedures. We also reviewed supporting documentation for these policies and procedures. Testwork was performed on a sample of construction inspection agencies and modular housing manufacturers for the period July 2001 through April 2004 to determine if the section was in compliance with its policies and procedures for documenting modular housing inspections, monthly reports from the Construction Inspection Agency and the manufacturer were filed, and the Construction Inspection Agency and manufacturer were properly licensed.

Based on our interviews, review of supporting documentation, and testwork, it appears that the policies and procedures for documenting modular housing inspections were adequate. However, we determined that Codes Enforcement is not monitoring compliance with the division's modular housing policies and procedures, as discussed in finding 1.

1. The Codes Enforcement section of the Division of Fire Prevention is not in compliance with modular building policies and procedures

Finding

The Codes Enforcement section of the Division of Fire Prevention is responsible for enforcing fire and building codes to protect the citizens of Tennessee from injury or death. One responsibility of the section is to monitor the construction and installation of modular buildings used for educational, business, residential, storage, and other occupancy purposes. The Codes Enforcement section has not complied with its policies and procedures concerning license renewal of construction inspection agencies, license renewal of modular building manufacturers, and obtaining monthly production reports from the modular building manufacturers.

Four of 10 construction inspection agency files tested (40%) did not contain documentation of license renewal. The Department of Commerce and Insurance has elected to hire construction inspection agencies to perform the inspections of modular building units. *Rules of the Department of Commerce and Insurance*, Division of Fire Prevention, Chapter 0780-2-13-.06, states, "No person shall act as a construction inspection agency under this Chapter without a valid letter of approval from the Department . . . All approvals issued . . . shall expire on June 30 of each year. An application for renewal of an approval shall be submitted on the form prescribed by the Department . . ."

Three of 15 modular building manufacturer files tested (20%) did not contain documentation of license renewal. *Rules of the Department of Commerce and Insurance*, Division of Fire Prevention, Chapter 0780-2-13-.03, states, "No person shall engage in business as a manufacturer of modular

building units . . . without first having obtained a manufacturer's license from the Department . . . All licenses issued hereunder shall expire on June 30 of each year. An application for renewal of a license shall be submitted on the form prescribed by the Department . . .”

For 3 of 15 modular housing manufacturer files tested (20%), the Codes Enforcement section did not have from two to six of the required monthly production reports from each manufacturer. There was no documentation of follow-up requests for these missing reports. In these reports, the modular building manufacturer is to list the state sequentially numbered labels attached to specific units—identified by the manufacturer's serial number—that were produced during the month. The department uses this information to track the modular label numbers attached to the buildings and the shipping location of the building. Section 68-126-304(a)(1), *Tennessee Code Annotated*, states that “. . . no modular building unit shall be offered for sale, sold, or installed in this state unless it is approved and bears the insignia of approval of the commissioner, the commissioner's designee, or an approved inspection agency.”

The purpose of the requirements regarding the manufacture and inspection of modular buildings is to protect the tenants of these units. Without proper documentation of the license renewal for construction inspection agencies or modular building manufacturers, there is an increased risk that inspections required of the department by state law may be performed by an unlicensed agency or that modular buildings may be constructed by an unlicensed manufacturer. Furthermore, without adequate controls to ensure that all production reports are received, the Codes Enforcement section cannot effectively track the Tennessee Modular Labels to the modular building units.

Recommendation

The Codes Enforcement section of the Division of Fire Prevention should comply with all modular housing policies and procedures. The Codes Enforcement section should properly document the renewal of licenses for construction inspection agencies and modular building manufacturers. Also, the submission of monthly production reports should be closely monitored to ensure that the state can track the Tennessee Modular Labels to the modular building units. Management should strengthen monitoring and supervisory controls designed to ensure adherence to policies and procedures.

Management's Comment

We concur. The licensing functions related to these programs have been converted to the Regulatory Boards licensing system for license issuance and tracking starting with fiscal year 2004-2005. All licensing transactions will now be automatically tracked and documented through this system.

The Fire Prevention Division sends letters to manufacturers every two to three months requesting monthly production reports that are past due. However, timely responses to these compliance letters are not always received, particularly from manufacturers located out of state. Eighty percent of licensed modular housing manufacturers that conduct business with the Division are located in

other states. The Division is in the process of developing cost effective procedures to discipline all manufacturers that fail to submit production reports in a timely manner.

MANUFACTURED HOUSING

The Division of Fire Prevention by statute has the responsibility of enforcing fire and building codes for the purpose of protecting the citizens of Tennessee from injury or death. The Codes Enforcement section of the Division of Fire Prevention is responsible for performing in-plant production line inspections of manufactured homes during the course of construction and performing inspections of completed manufactured homes on dealer lots.

The objectives of our review of the manufactured housing section were to determine whether

- policies and procedures were adequate to carry out its function,
- policies and procedures were followed,
- the mobile home monthly report from the manufacturer was obtained,
- inspections were performed as required by the manufactured housing procedures manual, and
- the prior audit finding had been resolved.

We reviewed applicable laws and regulations to determine the Codes Enforcement section's responsibilities for manufactured housing. We interviewed key personnel to gain an understanding of the section's policies and procedures for manufactured housing. We reviewed supporting documentation for these policies and procedures. We performed testwork on a sample of manufactured housing manufacturer files from May 2003 to April 2004 to determine if monthly reports from the manufacturer had been collected and whether inspections were performed as required. We followed up on the prior audit finding regarding insufficient documentation of manufactured housing inspections.

Based on our interviews, review of supporting documentation, and testwork, it appears that the policies and procedures for documenting manufactured housing inspections were adequate, and mobile home monthly reports were on file; however, inspections may not have been performed and the prior audit finding has been repeated.

2. As noted in the two prior audits covering the period July 1, 1997, through June 30, 2001, manufactured housing inspections designed to safeguard tenants may not be performed

Finding

The U.S. Housing and Urban Development (HUD) agency and the Codes Enforcement section in the state Division of Fire Prevention regulate manufactured housing (mobile home) production in Tennessee. HUD regulations require all manufactured home manufacturers to have a Production Inspection Primary Inspection Agency (IPIA). The State of Tennessee, as the IPIA for all manufactured home manufacturers in the state, is responsible for the inspection of these homes. State inspectors must be at all manufacturing plants year-round, but different inspectors rotate among the plants. The inspectors send monthly recap sheets with all inspection reports for the month to the Codes Enforcement section. The inspection reports are prepared at the manufacturer's site, and the information is then transcribed to the monthly recap sheet.

As noted in the two prior audits covering the period July 1, 1997, through June 30, 2001, inspections were not always in compliance with the policies and procedures. There was insufficient evidence that inspectors performed all of the required actions for inspections of quality assurance manuals and approved designs, certification label storage and recording procedures, and the manufacturer's test equipment and materials in storage. Management concurred with the prior findings, indicating that supervisors would monitor daily reports and monthly recap sheets for completeness and compliance with the section's procedures. Although management discussed the importance of properly documenting inspections with the inspectors, management failed to follow through to ensure that the documentation was properly completed. In 12 of 25 manufacturers' files tested (48%), the inspections were not performed as required by the *Procedures Manual for Manufactured Housing Inspectors*, and there was no documentation of supervisory review. The following discrepancies were noted.

- A. In 2 of 25 manufacturers' files tested (8%), the quality assurance manual and the approved designs were not reviewed once a week. Per HUD regulations, every manufactured home in the manufacturing plant is to be inspected at least once in some phase of production with respect to the manufacturer's quality assurance manual and approved designs. To ensure the inspector clearly understands and performs the inspection for compliance with approved designs, Section B.5 of the *Procedures Manual for Manufactured Housing Inspectors* requires the inspector to review the quality assurance manual and approved designs at the beginning of each inspection visit and to study these at least once a week during the visit.
- B. In 7 of 23 manufacturers' files tested (30%), the review of the manufacturer's certification label storage and recording procedures was documented on the monthly recap sheet but not on the inspection report. Section B.7 of the *Procedures Manual for Manufactured Housing Inspectors* requires the inspector to review certification label control and certification labels on hand at least once each month and to record the results of the review on the Supplemental Documentation Sheet (Form C).

- C. In 7 of 25 manufacturers' files tested (28%), there was no evidence that a review of the manufacturer's test equipment was performed. Section B.1.a and b of the *Procedures Manual for Manufactured Housing Inspectors* requires the inspector to observe the condition of all test equipment at least once per month. Furthermore, Section C states, "When test equipment is checked, place an X in the observed column." However, the observed column had not been checked.
- D. In 2 of the 25 manufacturers' files tested (8%), the inspections for material in storage were documented on the monthly recap sheet but not on the inspection report. Section B.2 of the *Procedures Manual for Manufactured Housing Inspectors* states that the inspection will be performed once per month and results will be reported on the Inspection Report on Form A and the Supplemental Documentation Sheet on Form C.
- E. In 3 of 25 manufacturers' files tested (12%), there were missing inspection reports for some of the dates. Inspectors perform product line inspections, record the information on the inspector's report, and subsequently transfer the information to the monthly recap sheet. The monthly recap sheet indicated production line inspections were performed, but the inspector's reports for those dates were not in the file.

The purpose of the requirements regarding the inspection of manufactured homes is to protect the tenants of these homes. The failure to document inspections of manufactured homes in compliance with the *Procedures Manual for Manufactured Housing Inspectors* could result in the disqualification of the State of Tennessee as the IPIA for manufactured homes in the state. Furthermore, inconsistency between the inspection reports and the monthly recap sheets makes it impossible to be certain whether inspections were performed as required, and this inconsistency could lead to reliance on inaccurate evidence of review.

Recommendation

All inspections should be conducted in compliance with the *Procedures Manual for Manufactured Housing Inspectors*. Management of the Codes Enforcement section should continue to communicate to the inspectors the importance of the completeness of the inspection reports and monthly recap sheets. Supervisors should monitor the inspection reports to ensure that inspections are performed according to HUD regulations and the departmental procedures. Supervisors should also ensure the inspection reports are consistent with the monthly recap sheets.

Management's Comment

We concur. In regard to this finding, all manufactured home inspectors have been counseled concerning the importance of properly documenting the review of the quality control manual and approved prints. All HUD regulations will be followed including section B.5 of the *Procedures Manual for Manufactured Housing Inspectors*, requiring all inspectors to review the quality assurance manual

and approved designs at the beginning of each inspection visit and to study these items a minimum of at least once a week during the visit. Supervisors are required to check for this item prior to initialing the reports and entry into the database.

All manufactured home inspectors have been counseled on the importance of the documentation of the label storage and records review. Each inspector has been given a verbal reprimand concerning this finding, and it has been documented in their supervisor's file. Supervisors are required to check for this item before initialing the report. In addition, a new form will require the inspectors to perform the review on a weekly basis. Additionally, the supervisor is required to fax this form to the Division at the end of each week.

All manufactured home inspectors have been counseled on the importance of documenting their inspection of the manufacturer's test equipment per the procedures manual. Each inspector has been given a verbal reprimand concerning this finding, and it has been documented in their supervisor's file. Supervisors are required to check the reports for this item prior to initialing them.

All manufactured home inspectors were counseled on the proper documentation of the inspection of material in storage. This documentation is to appear on the monthly recap sheet and on the supplemental documentation Form C. The inspectors were given a verbal reprimand concerning their finding and it has been documented in their supervisor's file. Supervisors are required to check every report for this item prior to initialing them as being compliant.

All manufactured home inspectors have been counseled as to the importance of making sure that all reports are sent to the main office. The supervisor is required to check the reports against the recap sheet. Any discrepancies are immediately reported and faxed to the Fire Prevention Division office or given to the supervisor to complete. If this occurs at the end of the month, and the manufacturer has not completed their response, only the cover sheet (Form A) is sent in.

Management recognizes and agrees that changes are needed in both the Modular and Manufactured Housing Programs. Both of these programs are in the process of being moved to another Section in the Fire Prevention Division. Reporting lines will be restructured in order to provide increased oversight of the work product of employees in this section. This major change should take effect within the next couple of months.

ARSON

The Arson section in the Division of Fire Prevention is responsible for investigating the cause, origin, and circumstances of fires, explosions, and other criminal acts where a fire or explosion is involved, including the investigation of all related deaths.

The objectives of our review of the Arson section were to determine

- the adequacy of the policies and procedures to carry out the section's responsibilities,
- if policies and procedures are followed,
- if investigations were begun promptly (based on the priority of the case), and
- whether there was adequate documentation of investigations.

We interviewed key personnel to gain an understanding of the section's arson investigation policies and procedures. We also reviewed supporting documentation for these policies and procedures. In addition, testwork was performed on a sample of investigation files from July 2001 to April 2004 to determine if there was evidence that the investigation was initiated promptly and whether there was adequate documentation of the investigation.

Based on our interviews, review of supporting documentation, and testwork, we concluded the policies and procedures over arson investigations were adequate and were followed and investigations were initiated promptly and adequately documented.

CONSUMER AFFAIRS

The Division of Consumer Affairs' mission is to protect consumers and businesses affected by unfair business practices. The division is a resource to help consumers and businesses understand their rights and responsibilities, resolve consumer complaints through mediation, investigate and address violations of the Consumer Protection Act, and oversee registration of organizations. The division coordinates with other divisions, in addition to other state and federal agencies, to mediate or otherwise resolve consumer complaints. The division receives between 3,000 and 5,000 consumer complaints every year.

The objectives of our review of the complaint resolution system in the Division of Consumer Affairs were to

- determine whether policies and procedures for complaint follow-up were adequate,
- determine whether follow-up on complaints was handled in compliance with policies and procedures,
- determine whether information in the complaint file agreed with the data in the consumer Protection Complaint Management System, and
- follow up on the prior audit finding.

We interviewed key personnel to gain an understanding of the division's policies and procedures for resolving consumer complaints. We reviewed supporting documentation for these policies and procedures, which were revised in March 2003. Testwork was performed on a sample of

complaints for the period March 1, 2003, to March 18, 2004, to determine if complaints were followed up on properly and the files and computer information agreed.

Based on our interviews, review of supporting documentation, and testwork, it appears that the Division of Consumer Affairs developed adequate policies and procedures to properly follow up on consumer complaints; however, the complaint follow-up procedures were not followed. It was also noted the buyer beware list had not been updated since July 2003 and the division has serious problems with its database. The prior-year finding has been repeated in finding 3.

3. The Division of Consumer Affairs is still failing to take timely action on complaints, has failed to list companies on its buyer beware list, and has significant database problems

Finding

The mission of the Division of Consumer Affairs is to serve and protect consumers from deceptive business practices through the processes of mediation, education, investigation, litigation, legislation, and registration. The division receives between 3,000 and 5,000 complaints every year. The division creates a file for every written complaint it receives and divides the complaints by category among the Consumer Protection Specialists. These specialists attempt to mediate a successful outcome for the consumer by contacting the respondent (the entity or individual against whom the complaint is made).

As noted in the previous two audits covering the period July 1, 1997, through June 30, 2001, the Division of Consumer Affairs did not comply with its policies and procedures for timely follow-up on complaints. Management concurred with the prior findings and revised the *Employee Procedures Manual* for the Division of Consumer Affairs effective March 2003. Although management indicated that the importance of adherence to the new policies and procedures would be stressed to all Consumer Protection Specialists, in 17 of 25 complaint files tested (68%), the division did not handle complaints in compliance with policies and procedures.

According to the revised *Employee Procedures Manual*, the Consumer Protection Specialists should mail a postcard to the complainant the day after receiving a complaint to acknowledge receipt of the complaint. However, in 3 of 25 complaint files tested (12%), it could not be determined if a postcard was sent. The manual further states that Consumer Protection Specialists should then send the first letter to the respondent no more than 15 business days after the complaint file is created. In 4 of 25 complaint files tested (16%), the first letter to the respondent was sent one to 84 days late. According to the manual, if a reply to the first letter is not received, the Consumer Protection Specialists should send a second letter to the respondent, by certified mail, within 15 business days. In 14 of 17 complaint files tested (82%), the second letter to the respondent was sent from one to 60 days late. If a response to the second letter is not received within 15 business days, the Consumer Protection Specialists should add the respondent to the Buyer Beware List that is posted on the Division of Consumer Affairs website. In three of six complaint files tested (50%), the business was not added to this list. At the time of our audit on June 25, 2004, the list on the website had not been updated since July 28, 2003.

To track the complaint files, the Division of Consumer Affairs uses an access database system, the Consumer Complaint Management System. Approximately every 10 days, the division experiences a significant database problem resulting in the loss of all data entered that day. Once the system is restored, all data for that day must be reentered.

The Division of Consumer Affairs' noncompliance with its complaint resolution policies and procedures delays the proper resolution of complaints, increasing the risk of consumer exposure to deceptive business practices. Consumers relying on the Buyer Beware List are provided inaccurate information if the listing is not regularly updated. The persistent failures of the database system are not only an extremely inefficient use of time and labor, but may also lead to inaccuracies in the system and unnecessary delays in the complaint process.

Recommendation

Since the mission of the Division of Consumer Affairs is to serve and protect consumers, it is very important that the division adhere to its policies and procedures for responding to and resolving consumer complaints. Management should provide proper monitoring and oversight to ensure adherence to policies and procedures. The division should also have a reliable system for documenting the complaint process.

Management's Comment

We concur. Delays in taking timely action on consumer complaints have for the most part been due to problems associated with the Division's complaint database. The Division's current database has had significant stability issues that at times have resulted in the loss of an entire day's worth of work. Since the completion of this audit, the Division has made a number of changes to the system to improve its stability. The current system has undergone an intensive diagnostic and repair effort, along with additional improvements made to support the management of the complaint system. Although the system is now relatively stable, the core software was not designed to specifically handle the user load required of it by the Division, and it remains inadequate. In calendar year 2004, the combined efforts of seven (7) employees resulted in the conclusion of more than 4,600 consumer complaints resulting in a recovery value for consumers of almost 1 million dollars. In the past, budgetary constraints have prevented the purchase and implementation of a new complaint management system; however, with the combined resources of several other divisions within the Department of Commerce and Insurance as well as the Departments of Health and Financial Institutions, a new system is being purchased that will meet the Division's needs with regard to both complaint handling and license issuance.

Although publication of the Buyer Beware List is not a statutorily mandated duty, we agree that it is a valuable tool for consumers. Due to limited resources, the Division has in the past only updated the Buyer Beware List on an annual basis. Based on the findings of this audit, the Division will now update the list quarterly. Although the Division would like to update the database more frequently than quarterly, current resources do not make this a realistic goal.

SECURITIES

The Division of Securities is responsible for registering all non-exempt securities to be sold in the State of Tennessee and registering all broker-dealers, broker-dealer agents, investment advisers, and investment adviser representatives to do business in the state.

The objectives of our review of the Division of Securities were to determine whether

- policies and procedures within the division were adequate and based on current state law;
- registration of non-exempt securities, renewals, and issuer refunds were reviewed for accuracy, adequately supported, properly approved, and in compliance with the division's policies and procedures; and
- registration of broker-dealers, broker-dealer agents, investment advisers, and investment adviser representatives were reviewed for accuracy, adequately supported, and in compliance with division's policies and procedures.

We interviewed key personnel to gain an understanding of the department's policies and procedures over broker-dealer registration and securities registration. We also reviewed supporting documentation for these policies and procedures. We performed testwork on samples of broker-dealer registration and securities registration for July 2001 to March 2004. We reviewed and performed testwork on a sample of registration records kept on file within the division to determine if securities registered within the state were reviewed for accuracy, adequately supported, properly approved, and in compliance with the division's policies and procedures. For broker-dealer registration, we reviewed and performed testwork on a sample of detailed reports and records kept on file to determine if the registered dealers were reviewed for accuracy, adequately supported, and in compliance with the division's policies and procedures. We also reviewed all refunds issued from July 2001 to March 2004 to determine if refunds were reviewed for accuracy, adequately supported, properly approved, and in compliance with the division's policies and procedures.

Based on interviews, review of supporting documentation, and testwork, it appears that the division's policies and procedures were adequate and in compliance with state law. It also appears that registered securities were reviewed for accuracy, adequately supported, and properly approved. It appears broker-dealer registrations were reviewed for accuracy and were adequately supported. Refunds were reviewed for accuracy, adequately supported, and properly approved.

INSURANCE

The Insurance Division is responsible for enforcing the state's insurance laws and supervising insurance companies authorized to do business in Tennessee. The Examinations section in the Division of Insurance regulates the formation, admission, operation, and examinations of the life, property and

casualty, and title companies, captives, health maintenance organizations, governmental entity pools, and risk retention groups. This section reviews and analyzes financial statements and performs detailed examinations of each company.

Our objectives in reviewing the Examinations section of the Division of Insurance were to determine whether

- policies and procedures were adequate and being followed,
- there was written confirmation of securities for examinations testwork,
- all confirmations were reviewed by the Chief Examiner,
- financial reports had the date received stamped on them,
- the proper financial analysis and review procedures were followed,
- there was documentation that the company filed with the Security Valuations Office, and
- the priority memo was drafted and updated as necessary.

We interviewed key personnel to gain an understanding of the Examination section's policies and procedures for the financial statement reviews and detailed examinations. We also reviewed supporting documentation for these policies and procedures. In addition, we performed test work on samples of quarterly reviews, annual reviews, and detailed examinations to determine whether there were written confirmations of securities for examinations testwork, all confirmations were reviewed by the Chief Examiner, financial reports were date stamped, the proper financial analysis and review procedures were followed, the company filed with the Security Valuations Office, and the priority memo was drafted and updated.

Based on our interviews, review of supporting documentation, and testwork, we determined that the Examinations section's policies and procedures were adequate and were followed. It appeared there were written confirmations of securities, confirmations were reviewed by the Chief Examiner, financial reports were date stamped, financial analysis and review procedures were followed, the company filed with the Security Valuations Office, and the priority memo was updated as necessary.

TENNCARE OVERSIGHT

The TennCare Oversight Division protects the integrity of the TennCare Program by monitoring Health Maintenance Organizations and Behavioral Health Organizations participating in the program. The division ensures that the HMOs and BHOs under contract with the state are in compliance with statutory and contractual requirements relating to their financial responsibility. The responsibilities of this division include reviewing and analyzing financial status, market conduct activities (claims processing

operations, prompt pay requirements) and compliance with federal and state laws, rules, and regulations as they apply to the TennCare Program MCO operations.

The objectives of our review of the Division of TennCare Oversight were to determine

- the adequacy of the division's procedures to carry out its responsibilities,
- whether the division follows its procedures,
- if MCO/BHO quarterly financial statements were reviewed for compliance with net worth requirements,
- if MCO/BHO quarterly financial statements were reviewed for compliance with restricted deposit requirements, and
- if MCO/BHO financial statement reviews were conducted timely.

We reviewed applicable laws and regulations to determine the Division of TennCare Oversight's responsibilities. We interviewed key personnel to gain an understanding of the division's controls and procedures, and we reviewed supporting documentation for these controls and procedures. In addition, we examined a sample of desk reviews for the period July 1, 1999, through September 30, 2003, for managed care organizations and behavioral health organizations to determine if these reviews were conducted timely and if these organizations' quarterly reports had been reviewed for compliance with minimum net worth requirements and compliance with restricted deposit requirements.

Based on our review of applicable laws and regulations, interviews, reviews of supporting documentation, and testwork, we determined that the Division of TennCare Oversight's policies and procedures were adequate and were followed. It appeared managed care organizations' and behavioral health organizations' financial statements were reviewed for compliance with minimum net worth and restricted deposit requirements, and reviewed timely.

REGULATORY BOARD ADMINISTRATION

The Regulatory Board Division licenses and regulates several hundred thousand Tennesseans in their professions and businesses. These boards and commissions can take disciplinary action, including revocation of licenses and assignment of civil penalties, against license holders found guilty of violating laws governing their professions.

The objectives of our review of the Division of Regulatory Boards were to determine

- the applicable state statutes, the mission, the responsibilities, and the activities of the Division of Regulatory Boards, and the procedures followed to carry out the division's functions;

- whether expenditures are supported, correct, and properly accounted for;
- whether revenue collection, accounting, and reconciliation procedures are consistent throughout the division;
- whether employees worked in the program to which their salary is charged;
- whether adequate procedures for the preparation of the annual report for regulatory boards have been established and are followed; and
- the adequacy of the division's procedures to carry out its function and whether the board follows its procedures.

We reviewed applicable laws and regulations to determine the Division of Regulatory Board Administration's responsibilities. We interviewed key personnel to gain an understanding of the division's policies and procedures. We performed testwork on samples of expenditures for the period July 2001 to February 2004 to ensure the amount paid agrees with the invoice or other supporting document, the invoice is mathematically correct, and the item is charged to the proper account. Revenue testwork was performed for the period July 2001 to February 2004 to ensure the receipt is posted to the proper account in the general ledger and subsidiary ledger. Payroll transactions were tested for the period July 2001 to February 2004 to ensure the employee actually worked in the program to which the salary is charged. We reviewed supporting documentation for the 2003 annual report to determine if existing procedures were adequate and resulted in an accurate presentation of the year's activity and ending balance.

Based on interviews, observations, review of supporting documentation, and testwork, it appears that the regulatory board's policies and procedures were adequate to carry out the board's function and were based on current law. Expenditures, revenues, and payroll transactions appear to be supported, correct, and properly accounted for. We determined that procedures for the preparation of the annual report of regulatory board reserve balances should be more completely documented, as discussed in finding 4.

4. The Division of Regulatory Boards does not have adequate written policies and procedures for the preparation of the annual report

Finding

Each of the regulatory boards in the division is required to be self-sufficient. The division compiles an annual report detailing each regulatory board's license and fee collections, expenditures, and beginning and ending reserve balances. The legislature uses this report to determine if each board is self-sufficient and to adjust the fees of those boards that appear to be collecting too much or too little to cover expenses. The division obtains all revenue and expenditure amounts for the report from the

state's accounting system. Indirect costs, consisting of department administration, division administration, legal, and investigation expenditures, are allocated among the several boards.

Although the report was prepared using reasonable procedures and reflecting information in the state's accounting system, the division has not completely documented the process used to prepare the report. It is important that this process be formalized to provide

- a guide—to serve as a checklist—to ensure that all appropriate information is gathered and accurately presented,
- documentation of sources of data presented in the report,
- documentation of indirect cost allocation methodology,
- documentation of unusual or nonrecurring circumstances,
- year-to-year consistency, and
- a working plan for staff in future years when the originators of these procedures might no longer be preparing this report.

Recommendation

The division should develop a complete, written set of procedures for the preparation of the annual report in order to ensure accurate and complete reporting of regulatory board fee collections, expenditures, and reserve balances. The procedures should provide a description of the sources of all data; documentation of the allocation methods for the various indirect costs; the system for compilation of amounts, by board, for presentation in the report; and effective review by the department's fiscal office.

Management's Comment

We concur. The Division of Regulatory Boards implemented written procedures related to the preparation of its annual report following an audit finding for the years ended June 30, 1998, and June 30, 1999. During the subsequent audit for 2000 and 2001, no similar finding was made. These procedures were both prepared and utilized by a long time state employee who was thoroughly familiar with the processes necessary to the preparation of this report. That employee has since left the department, and the written procedures were found to be difficult for a new employee to utilize. The Division is currently working on new procedures to address the weaknesses of the existing policy.

EMERGENCY COMMUNICATIONS BOARD

The Emergency Communications Board is responsible for ensuring wireless 9-1-1 service is implemented across the State of Tennessee in accordance with the Federal Communications Commission's regulations in the most cost-effective and efficient manner. The board also provides financial, operational, and technical oversight to emergency communication districts in the state.

The objectives of our review of the controls and procedures in the Emergency Communications Board were to determine whether

- the policies and procedures were adequate and based on current state law;
- revenue received from Commercial Mobile Radio Service Providers was adequately supported, properly approved, and in compliance with the program's policies and procedures before being deposited in the 911 Communications fund;
- disbursements were adequately supported, properly recorded, properly approved, and in compliance with the program's policies and procedures.

We reviewed applicable laws and regulations to determine the Emergency Communications Board's responsibilities. We interviewed key personnel to gain an understanding of the board's policies and procedures. We reviewed and performed testwork on a sample of revenue remittance forms and journal vouchers for the period July 2001 to March 2004 to determine if revenue received from Commercial Mobile Radio Service Providers was adequately supported, properly approved, and in compliance with the program's policies and procedures. We also reviewed and performed testwork on a sample of voucher registers, invoices, and other supporting documentation for the period July 2001 to March 2004 to determine whether disbursements were adequately supported, properly recorded, properly approved, and in compliance with the program's policies and procedures.

Based on our interviews, review of supporting documentation, and testwork, it appears that the Emergency Communications Board's policies and procedures were adequate and were followed; revenues were properly supported and approved, and in compliance with the board's policies and procedures; and disbursements were adequately supported, properly recorded, properly approved, and in compliance with the board's policies and procedures.

MOTOR VEHICLE COMMISSION

The Tennessee Motor Vehicle Commission is committed to the uniform and impartial application of the Tennessee Dealer-Manufacturer Licensing Laws, Rules and Regulations. These regulations are intended to empower consumers while allowing all dealers to compete for business on a level playing field.

The objectives of our review of the controls and procedures in the Motor Vehicle Commission were to determine

- the applicable state statutes, the mission, the responsibilities, and the activities of the Motor Vehicle Commission;
- the adequacy of the Commission's procedures to carry out its function and whether the Commission follows its procedures; and
- whether the Commission properly issued licenses to salesperson, dealers, and dismantlers/recyclers.

We reviewed applicable laws and regulations relating to the Motor Vehicle Commission. We interviewed key personnel to gain an understanding of the Commission's policies and procedures. We performed testwork on a sample of salesperson, dealer, and dismantler/recycler licensees as of April 2, 2004, to determine whether the Commission issued licenses in compliance with policies and procedures. Salesperson licensees were tested to determine if applications were complete. Dealer licensees were tested to determine if their file contained a dealer inspection report; a financial statement prepared by a licensed CPA; an annual sales report; a sales tax identification number; a business tax license number; if applicable, a franchise agreement; and evidence of liability insurance coverage. Dismantler/recycler licensees were tested to determine if their file contained a dealer inspection report; evidence of liability insurance coverage; a sales tax identification number; and a business tax license number.

Based on interviews, observations, review of supporting documentation, and test work, it appears that the Tennessee Motor Vehicle Commission's policies and procedures were adequate and being followed. It also appears the Commission properly issued licenses to salespersons, dealers, and dismantler/recyclers.

CONTRACTORS/HOME IMPROVEMENT BOARD

The Tennessee Board of Licensing Contractors' mission is to ensure that quality and fair construction practices exist in all phases of the industry in order to protect the safety and welfare through the regulation of contracting by means of examination, licensure, and disciplinary action. In addition to contractors' licenses, the board also issues Home Improvement and Limited Licensed Electrician licenses.

The objectives of our review of the controls and procedures in the Board of Licensing Contractors were to determine

- the applicable state statutes, the mission, the responsibilities, and the activities of the Board of Licensing Contractors;

- the adequacy of the board's procedures to carry out its function and whether the board follows its procedures; and
- whether the board properly issued licenses to contractors, home improvement contractors, and electricians.

We reviewed applicable laws and regulations relating to the board. We interviewed key personnel to gain an understanding of the board's policies and procedures. We performed testwork on a sample of contractor, home improvement, and electrician licensees covering the period July 2001 through April 2004 to determine whether the board issued licenses in compliance with policies and procedures. Contractor licensees were tested to determine if applications were complete, required exams were passed, required financial statements were filed, a letter of reference was submitted, and if applicable, a corporate charter was submitted. Home improvement licensees were tested to determine if applications were complete and proof of financial responsibility was submitted. Electrician licensees were tested to determine if applications were complete and required exams were passed.

Based on interviews, observations, review of supporting documentation, and test work, it appears that the Tennessee Board of Licensing Contractor's policies and procedures were adequate to carry out the board's function and being followed. Licenses also appeared to be properly issued to applicants based on board policies and procedures.

BOXING AND RACING BOARD

The Boxing and Racing Board in the Division of Regulatory Boards is responsible for the licensing of boxers, promoters, managers, seconds, referees, judges, and timekeepers for boxing matches and toughman contests; monitoring boxing matches and toughman contests; and licensing race tracks.

The objectives of our review of the policies and procedures of the Boxing and Racing Board were to determine whether

- the policies and procedures were adequate and being followed,
- methods used by the board to issue licenses were in compliance with current state law,
- racetrack licenses were properly issued, and
- boxing events were properly monitored.

We reviewed applicable laws and regulations to determine the Boxing and Racing Board's responsibilities. We interviewed key personnel to gain an understanding of the board's policies and procedures. We reviewed supporting documentation for these policies and procedures. We performed testwork on a sample of racetracks for the period July 1, 2001, to May 4, 2004, to determine if license

were properly applied for, the correct fee was paid, and the applicant submitted proof of liability insurance. We tested a sample of boxing and toughman events for the period July 1, 2001, to May 4, 2004, to determine if all event participants were properly licensed; boxers were identified, weighed, and had physical exams performed; and matches were properly observed, result sheets were prepared, and the promoter gave 14 days' notice to the board before the event.

Based on our interviews, review of supporting documentation, and test work, it appears that the Boxing and Racing Board's policies and procedures over license issuance for racetracks and monitoring of boxing/toughman contests were adequate and were followed. It appears racetrack licenses were properly applied for, correct fees were collected, and proof of liability was on file. It appears that boxing and toughman events were properly licensed; boxers were identified, weighed, and had the required physical exams; and matches were observed, results were recorded, and promoters gave the required notice to the board.

ALARM SYSTEM CONTRACTORS BOARD

The Alarm Systems Contractors Board in the Division of Regulatory Boards is responsible for the certifying, licensing, and regulation of alarm contractors, qualified agents, and alarm contractor employees.

The objectives of our review of the policies and procedures of the Alarm Systems Contractors Board were to determine whether

- the policies and procedures were adequate and being followed;
- methods used by the board to issue licenses were in compliance with current state law;
- alarm system contractors had proof of insurance, a proper application, a business license, and paid the correct fee; and
- qualified agents met the education, work experience, and training requirements and paid the correct fee.

We reviewed applicable laws and regulations to determine the Alarm Systems Contractors Board's responsibilities. We interviewed key personnel to gain an understanding of the board's policies and procedures. We reviewed supporting documentation for these policies and procedures. We performed testwork on a sample of alarm system contractor files for the period July 1, 2001, to May 7, 2004, to determine if they had provided proof of insurance, applied properly, provided a business license, and paid the correct fee. We tested a sample of qualified agent files for the period July 1, 2001, to May 7, 2004, to determine if education, work experience, and training requirements were met and if they paid the correct fee.

Based on our interviews, review of supporting documentation, and testwork, it appears that the Alarm Systems Contractors Board's policies and procedures over license issuance were adequate and being followed. Methods used by the board to issue licenses were in compliance with state law. Alarm system contractors had provided proof of insurance, applied properly, provided a business license, and paid the correct fees. Qualified agents met the education, work experience, and training requirements and had paid the correct amount for licensure or renewal.

GEOLOGY REGISTRATION BOARD

The mission of the Geology Registration Board is to register all geologists who practice geology in the State of Tennessee. The responsibilities of the board include licensing geologists, renewing licenses, and assessing fees on late renewals.

Our objectives in reviewing the Geology Registration Board were to determine whether

- the policies and procedures were adequate and being followed;
- applicants had met the applicable state requirements for license issuance or renewal;
- applicants had met the required education to be licensed as a geologist;
- applicants paid the correct application, registration, upgrade, or renewal fees; and
- registered geologists met the five-year work experience requirements to be licensed as a professional geologist.

We reviewed applicable laws and regulations relating to the Geology Registration Board. We interviewed key personnel to gain an understanding of the board's policies and procedures. We performed testwork on a sample of geologists on file with the board for the period July 1, 2001, through May 17, 2004, to determine whether the board issued licenses in compliance with state laws, regulations, and board policies and procedures. Geology licenses were tested to determine if applications were complete, had the proper documentation for the education requirements, proper fees were collected, and work experience requirements were met.

Based on interviews, observations, review of supporting documentation, and testwork, it appears that the Geology Registration Board's policies and procedures were adequate and being followed. Licenses appeared to be properly issued to applicants based on board policies and procedures and applicable state laws and regulations.

EMPLOYEE LEASING BOARD

The mission of the Employee Leasing Board is to protect the consumers who are using the employee leasing services, to ensure that all employee leasing companies are registered with the State of

Tennessee, and to ensure that the leasing agencies are insured. The responsibilities of the board include licensing employee leasing agencies, renewing licenses, and assessing fees on late renewals. The board regulates the employee leasing profession and makes sure that all registrants meet the requirements of *Tennessee Code Annotated* for initial registrations as well as for renewals.

Our objectives in reviewing the Employee Leasing Board were to determine whether

- policies and procedures of the board were adequate and being followed,
- all applicable fees were paid,
- net worth requirements were demonstrated,
- the licensee submitted within 90 days of the end of each calendar quarter a certification from an independent CPA verifying that all payroll taxes have been paid on a timely basis, and
- the licensee provided a certificate of insurance showing that all employees are covered by workers' compensation.

We reviewed applicable laws and regulations relating to the Employee Leasing Board. We interviewed key personnel to gain an understanding of the department's policies and procedures over employee leasing agencies. We performed testwork on employee leasing agencies kept on file with the board for the period July 1, 2001, through December 31, 2003, to determine if applicable fees were paid, net worth requirements were met, required reports were submitted, reports were submitted timely, and proof of insurance had been obtained.

Based on interviews, observations, and testwork, it appears the Employee Leasing Board's policies and procedures were adequate to carry out the board's function. However, based on testwork, we found the Employee Leasing Board did not ensure that agencies submitted reports required by law (finding 5).

5. The Employee Leasing Board is not enforcing the requirements for timely certification of payroll tax payments or documentation of Workers' Compensation Insurance Coverage by licensees

Finding

The Employee Leasing Program licenses entities that handle by contract all personnel functions for companies and industries in Tennessee. *Tennessee Code Annotated* requires evidence of workers' compensation insurance coverage for all leased employees who will be subject to the Tennessee Workers' Compensation Law, before issuing a license to an employee leasing agency. In addition, within 90 days of the end of each calendar quarter, the licensee is responsible for submitting a certification by an independent certified public accountant or independent public accountant that all

applicable payroll taxes have been paid on a timely basis. However, department personnel did not enforce the receipt of timely quarterly reports and evidence of workers' compensation insurance as required by *Tennessee Code Annotated*. Nineteen of 25 employee leasing agency files tested (76%) were not in compliance with Section 62-43-113, *Tennessee Code Annotated*. The following discrepancies were noted in our review and testwork.

- In 18 of 25 files tested (72%), not all required quarterly certifications from the licensees' independent accountant were present in the file.
- In 19 of 25 files tested (76%), not all certifications were submitted within 90 days of the end of the quarter.
- In one of 25 files tested (4%), a certificate of insurance, documenting appropriate workers' compensation insurance, was not present in the licensee's file.

Without the required documentation, the Employee Leasing Board has no assurance that the employee leasing agencies are adequately insured or are making the appropriate tax payments, leaving the consumers of the employee leasing agencies unprotected.

Recommendation

The Employee Leasing Board staff should ensure that a certification from an independent certified public accountant or independent public accountant is received within 90 days of the end of each calendar quarter. Furthermore, the Employee Leasing Regulatory Board should ensure that proof of workers' compensation insurance is received from the licensee before the license is issued.

Management's Comment

We concur. For the ten years prior to Fiscal Year 2004-05, the employee leasing licensing program was assigned to the Division of Regulatory Boards without any personnel positions being created to handle the administration of this program. An improvement request was approved by the General Assembly in 2004, which created an administrative position for this program.

The following corrective action has been taken since the Division of Regulatory Boards became aware of the audit findings:

1. All licensees who were not compliant with *Tennessee Code Annotated*, Section 62-43-113(a)(3) were notified via certified mail of their non-compliance and given thirty (30) days in which to respond. In addition, this notification instructed licensees to submit future quarterly reports within ninety (90) days of the end of each quarter as specified by *Tennessee Code Annotated*, Section 62-43-113(a)(3). Complaints were established against those licensees who failed to respond and/or failed to comply with this request.

2. Upon application for renewal, each licensee's departmental record is reviewed to verify compliance with *Tennessee Code Annotated*, Section 62-43-113(a)(3). Upon determining there is a violation, the licensee is sent a notice via certified mail and given fourteen (14) days in which to respond.
3. The renewal notice has been modified to add an affidavit in which the licensee must attest that all provisions of *Tennessee Code Annotated*, Section 62-43-113(a)(3) have been satisfied as specified by Administrative Rule 0780-5-8-.04.
4. The Regulatory Boards System database has been modified by adding a field that indicates the status of compliance with *Tennessee Code Annotated*, Section 62-43-113(a). Until the status has been changed in this required field to indicate that the quarterly reports have been received the licensee's renewal cannot be approved.

In addition to the above, a search of all licensee files has been performed to verify that proof of workers' compensation insurance was submitted prior to licensure.

CONTRACTS

The Department of Commerce and Insurance is responsible for developing contracts, determining if funding is adequate, identifying specific areas in which service contracts are necessary, reviewing vendor compliance, and monitoring all contracts.

The objectives of our review of the controls and procedures for contracts were to determine whether

- contracts were properly approved and supported,
- contracts were in compliance with contract terms,
- contracts were recorded accurately and reconciled to the state accounting system, and
- contracts were established within guidelines established by the Department of Finance and Administration's Office of Contract Review.

We interviewed key personnel to gain an understanding of the department's controls and procedures over contracts and reviewed supporting documentation for these controls and procedures. We performed testwork on contracts for the period July 2001 through February 2004 to determine if contracts were properly approved, adequately supported, and in compliance with the Department of Finance and Administration's Office of Contract Review guidelines and contract terms. We also performed testwork on accounting system reports to determine if contracts were recorded accurately and reconciled.

Based on our interviews, review of supporting documentation, and testwork, it appears that the department's policies and procedures over contracts were adequate and followed. Contracts appeared to be properly approved, supported, recorded accurately, reconciled to the state accounting system, and in compliance with the Department of Finance and Administration's guidelines and contract terms.

CONFLICTS OF INTEREST

Our objectives in reviewing the department's conflict-of-interest policy and compliance were to determine

- whether the department was in compliance with applicable state law regarding conflicts of interest,
- how management identifies and documents potential conflicts of interest, and
- if management is in compliance with current conflict-of-interest policy.

We reviewed applicable laws related to conflicts of interest. We interviewed key personnel to gain an understanding of management's policies. We performed testwork on a sample of employees and board members as of March 26, 2004, to determine if the correct conflict-of-interest forms were complete.

Based on interviews, observations, review of supporting documentation, and testwork, it appears management's policies are adequate and in compliance with current state law. However, management did not ensure conflict-of-interest forms were completed by all board members (finding 6).

6. Conflict-of-interest disclosures are not required for board members

Finding

The Department of Commerce and Insurance does not require board members to provide a conflict-of-interest disclosure form. Although the department has developed policies and procedures for disclosing potential employee conflicts of interest, the policies and procedures do not encompass potential board member conflicts of interest. The department defines a conflict of interest as a situation that exists whenever a department employee is placed in a position where, for some advantage gained or to be gained personally, the employee finds it difficult if not impossible to devote him/herself with complete energy, loyalty, and singleness of purpose to the best interest of the general public. The purpose of the conflict-of-interest policy is to ensure that the department's interests are not compromised if an employee undertakes some activity that may adversely affect that person's ability to provide full and unbiased service. While the board members are not considered employees, their ability to provide full and unbiased service is also essential.

Recommendation

The department should develop policies and procedures requiring conflict-of-interest disclosure from all board members. Disclosure forms should be completed upon appointment and updated whenever circumstances change and at least annually.

Management's Comment

We concur. Although some board members had signed a conflict of interest statement, signing a conflict of interest disclosure statement has not been a requirement for board members. Since becoming aware of this finding, the Division of Regulatory Boards revised the conflict of interest statement. All current board members have signed the revised statement. Signing the conflict of interest statement is now required of all board members before being allowed to participate in a board meeting.

FINANCIAL INTEGRITY ACT

Section 9-18-104, *Tennessee Code Annotated*, requires the head of each executive agency to submit a letter acknowledging responsibility for maintaining the internal control system of the agency to the Commissioner of Finance and Administration and the Comptroller of the Treasury by June 30 each year. In addition, the head of each executive agency is required to conduct an evaluation of the agency's internal accounting and administrative control and submit a report by December 31, 1999, and December 31 of every fourth year thereafter.

Our objectives were to determine whether

- the department's June 30, 2003; June 30, 2002; and June 30, 2001, responsibility letters and December 31, 2003, internal accounting and administrative control report were filed in compliance with Section 9-18-104, *Tennessee Code Annotated*;
- documentation to support the department's evaluation of its internal accounting and administrative control was properly maintained;
- procedures used in compiling information for the internal accounting and administrative control report were in accordance with the guidelines prescribed under Section 9-18-103, *Tennessee Code Annotated*; and
- corrective actions are being implemented for weaknesses identified in the report.

We interviewed key employees responsible for compiling information for the internal accounting and administrative control report to gain an understanding of the department's procedures. We also reviewed the June 30, 2003; June 30, 2002; and June 30, 2001, responsibility letters and the December 31, 2003, internal accounting and administrative control report to determine whether they

had been properly submitted to the Comptroller of the Treasury and the Department of Finance and Administration. To determine if corrective action plans had been implemented, we interviewed management and reviewed corrective action for the weaknesses identified in the report.

We determined that the Financial Integrity Act responsibility letters and internal accounting and administrative control report were submitted on time, support for the internal accounting and administrative control report was properly maintained, and procedures used were in compliance with *Tennessee Code Annotated*. Corrective actions are being taken on the weaknesses noted.

OBSERVATIONS AND COMMENTS

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Section 4-21-901, *Tennessee Code Annotated*, requires each state governmental entity subject to the requirements of Title VI of the Civil Rights Act of 1964 to submit an annual Title VI compliance report and implementation plan to the Department of Audit by June 30 each year. The Department of Commerce and Insurance filed its compliance reports and implementation plans on June 21, 2002, and June 25, 2003.

Title VI of the Civil Rights Act of 1964 is a federal law. The act requires all state agencies receiving federal money to develop and implement plans to ensure that no person shall, on the grounds of race, color, or origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funds. The Human Rights Commission is the coordinating state agency for the monitoring and enforcement of Title VI. A summary of the dates state agencies filed their annual Title VI compliance reports and implementation plans is presented in the special report *Submission of Title VI Implementation Plans*, issued annually by the Comptroller of the Treasury.

APPENDIX

ALLOTMENT CODES

Department of Commerce and Insurance divisions and allotment codes:

335.01	Division of Administration
335.02	Division of Insurance
335.03	Division of Fire Prevention
335.04	Division of TennCare Oversight
335.05	Division of Securities
335.06	Division of Consumer Affairs
335.07	Fire Service and Codes Enforcement Academy
335.08	911 Emergency Communications
335.10	Division of Regulatory Boards
335.15	Real Estate Education and Recovery
335.16	Auctioneer Education and Recovery
335.28	Tennessee Commission on Fire Fighting Personnel